ELECTRICS INTERNATIONAL CO. LTD VS. **1. ARCHPLAN INTERNATIONAL LTD**
2. M.A. KHARAFI & SONS LTD
3. NATIONAL INSURANCE CORPORATION LTD

THE HIGH COURT OF TANZANIA
MACKANJA, J.
7TH JANUARY, 1999 – D'SALAAM

Civil Practice & procedure – Application for a temporary injunction – Preliminary Objection by defendants – defectiveness of the affidavit – non-compliance of the affidavit with the requirements of Oaths (Judicial Proceedings and Statutory Declaration) Act, 1966 and Order XLIII Rule 2 of the C.P.C. 1966 – Whether application competent.

In this application the plaintiff company prayed for a temporary injunction whereby the defendant companies were to be restrained from withdrawing from the applicant's tender, a sub-contract for electrical installation at the third respondents building or awarding it to any other persons pending the hearing and final determination of an application for a temporary injunction. The application was supported by the affidavit of the Managing Director of the applicant.

The defendants filed four preliminary objections against the application. On a careful examination of these preliminary matters, the court was satisfied that only the first deserved consideration, namely that the verification clause in the affidavit supporting the application was bad in law. The rest were misconceived and, therefore, untenable.

The court, therefore, dealt with the first objection. The deponent stated in the affidavit that "… what is stated under paragraphs 1, 2, 3, 4, … 10 and 11 herein above is true to the best of my knowledge and belief."

It was the court's view, that there is no doubt that anyone reading the affidavit will easily notice tht the contents are declared to be true of the deponent's own knowledge to his belief. The word "and" used between the words "knowledge" and "belief" means, in the court's interpretation "both". Thus the contents are true "both" to the deponent's knowledge and belief. The affidavit will be defective if contents which are true of the deponent's own knowledge are not severed from those which are true to his belief in respect of which he may have to provide grounds.

HELD: The affidavit supporting the application is incurably defective.

Application dismissed with costs.

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For applicant … Mr. Tadayo
For 1st and 2nd respondent … absent
For 3rd respondent … Mr. Koga

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IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM
CIVIL CASE NO. 367 OF 1998

RULING

MACKANJA, J.

in this application the plaintiff company prays for a temporary injunction whereby the defend companies will be restrained from withdrawing from the applicant the tender, namely, a sub-contract for electrical installation at the third respondent's building works known as NIC Pension Plaza, at Ubungo and/or

awarding it to any other person pending the hearing and final determination of an application for a temporary injunction. The applicant desired to have the matter heard *ex-parte*, initially, before it would be heard ***inter-partes***. Upon seeing the pleadings I directed that the matter be heard ***inter-partes*** right away. Learned counsels were directed to argue the application by way of written submissions. They have duly complied. And, in this application M/s Gomba & Tadayo, learned counsel and Mr. Msemwa, learned advocate, act for the applicant and for the respondent, respectively. The application is supported by the affidavit of Sebastian C. Ngimbwa, the Managing Director of the applicant.

The application was presented for filing on the 4th December, 1998. On 10th December, 1998, Mr. Msemwa, acting for the 3rd defendant, filed four preliminary objections against the said application, as follows:

(a) that the verification clause in the affidavit supporting the application is bad in law;

(b) that the jurat offends the requirements of the Oaths (Judicial Proceedings and Statutory Declarations) Act, 1966;

(c) That the affidavit is bad in law as it does not disclose the name of the plaintiff besides "Electrics International Co. Ltd. and that the affidavit offends the mandatory provisions of Order XLIII rule 2 of the Civil Procedure Code.

On a careful examination of these preliminary matters only the first objection deserves consideration. The rest are misconceived and, therefore, untenable. For anyone reading the affidavit of Sebastian C. Ngimbwa will not fail to see that it was sworn before a commissioner for oaths to whom the deponent "… is personally known." This takes care of the second objection. The complaint in the third objection is that the affidavit does not sufficiently disclose the plaintiff. This objection is obviously vexatious, for the reading of the application is a correct replica of the heading in the pleadings. Likewise, the fourth objection is wholly untenable. In this behalf learned counsel seems to contend that the application does not conform to the requirements of rule 2 of Order XLIII which provides that:

> *"2. Every application to the court made under this Code shall, unless otherwise provided, be made by a chamber summons supported by affidavit …"*

There is here a chamber summons. There is also an affidavit. It matters not if the affidavit is found to be defective. In any case this objection is bound to fail because Mr. Msemwa's arguments appear to be totally incomprehensible in this part of his submissions, namely:-

> *"The interpretation of this provisions of the law is that a party who files an application in the court is the applicant and the opposite party is the respondent.*
>
> *There is no applicant in the affidavit a party in the affidavit a party called the application or the respondent. This is clearly drawn in the pleadings. This is defective and bad in law." (*Quoted verbatim*).*

I cannot pretend that I can say with any certainty what learned counsel is trying to put across. It would not be in the interests of justice to conjure up a decision on such an incomprehensible argument. And so the second, third and fourth grounds of objection would fail. In now turn to consider the first ground.

The complaint as relates to the first ground of objection is that the verification clause in the affidavit supporting the application is materially and irreparably defective. For the deponent states thus:-

> "*What is stated under paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 herein above is true to the best of my knowledge and belief."*

Mr. Msemwa argues that, that verification clause is not in keeping with Order XIX rule 3(1) of the Civil Procedure Code which provides that:-

"3(1) Affidavit shall be confirmed to such facts as the deponent is able to his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted."

"Provided that the grounds thereof are disclosed."

He has cited the decision of this Court in Edward Misango vs. Minister for Labour and Youth Development & Another, Misc. Civil Cause No. 29 of 1997 (unreported), at page 2, in support of this arguments.

On his part learned counsel for the respondent contends that whatever is deponed on is both to the deponent's knowledge and belief. It follows, therefore, that since all the averments are, in the first place, to the deponent's knowledge, which is primary, the question of belief does not need to be addressed. Thus, to learned counsel, the requirements of disclosure of grounds would only arise if there were averments stated on belief only. Well, this argument is very persuasive. But is it tenable? There is no doubt that anyone reading the affidavit will easily notice that the contents are declared to be true of the deponent's own knowledge and to his belief. The word "and' used between the words "knowledge" and "belief" means, in my interpretation, "both". Thus the contents are true "both" to the deponent's knowledge and belief. The affidavit will be defective if contents which are true of the deponent's own knowledge are not severed from those which are true to his belief in respect of which he may have to provide grounds. It is in this context that the respondents' learned counsels arguments fail. It is on the same parity that I find that the affidavit that supports the application is incurably defective. The first objection would therefore succeed, with the consequent result that the application for the injunctive relief would fail.

Application dismissed with costs.

Delivered.

J.M. MACKANJA
JUDGE
7/1/1999

Mr. Tadayo, Advocate for the Applicant
Absent for 1st and 2nd Respondents
Mr. Koga, Advocate for the 3rd Respondents